Fiber Industries, Inc. *and* Drivers, Chauffeurs, Warehousemen and Helpers Local No. 71, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 11-RC-4714[1]

26 August 1983

FOURTH SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On 16 December 1982 Administrative Law Judge Phil W. Saunders issued the attached Decision in this proceeding. Thereafter, Petitioner filed exceptions and a supporting brief, and the Employer filed an answering brief to Petitioner's exceptions.[2]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record[3] in light of the exceptions and briefs and has decided to affirm

[1] On 12 March 1982 a Board panel (Member Zimmerman dissenting) issued its Third Supplemental Decision and Order herein adopting the Acting Regional Director's report in which he recommended that Petitioner's Objections 1 through 16 be consolidated for hearing with numerous unfair labor practice charges filed by Petitioner. During the course of the hearing, however, the parties settled those unfair labor practice issues which were not incorporated by Petitioner's objections. Thereafter, the Administrative Law Judge granted the General Counsel's motion to sever the representation proceeding from the unfair labor practice cases. The parties then stipulated that the resolution of the unfair labor practice cases would not affect the Administrative Law Judge's jurisdiction to hear the instant case.

[2] Upon the issuance of the Administrative Law Judge's Decision, the time for filing exceptions and briefs was set for 10 January 1983. On Wednesday, 4 January, Petitioner mailed from its Washington, D.C., office a letter to the Board's Executive Secretary requesting an extension of time for filing to 3 February 1983. This letter was not received by the Board until the morning of 10 January. The next day, the Executive Secretary's Office granted Petitioner's extension of time request. In its motion, the Employer contends that Petitioner's exceptions and brief are untimely since Sec. 102.46(a) of the Board's Rules and Regulations, Series 8, as amended, provides that "[r]equests for extension of time to file exceptions or briefs . . . must be received by the Board 3 days prior to the due date." Additionally, the Employer asserts that it never was served with a copy of Petitioner's request as required by this provision. Since the untimeliness of Petitioner's submission clearly was caused by postal delays, we believe that it will effectuate the policies of the Act to apply liberally our filing deadlines under these extenuating circumstances. As for the Employer's contention that it did not receive a copy of Petitioner's letter, we administratively note that the request submitted herein by Petitioner, found in the formal file, indicates that a copy was served on the Employer's counsel, albeit at its South Carolina, not its Georgia, location. In these circumstances, we conclude that Petitioner has made a good-faith effort to comply with our requirements. See *World Publishing Co.*, 220 NLRB 1065, fn. 2 (1975).

The Employer also has moved that the Board reject Petitioner's exceptions on the ground that they fail to set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken, and fail to notify the Board of the grounds for its exceptions or the portions of the record relied on in support of its position. Although Petitioner's exceptions do not fully comply with Sec. 102.46(b) of the Board's Rules and Regulations, we have decided not to reject them since Petitioner's brief sufficiently designates those portions of the Administrative Law Judge's Decision that it claims are erroneous. *Giddings & Lewis, Inc.*, 240 NLRB 441, fn. 2 (1979). Accordingly, we adopt the Executive Secretary Office's administrative decision to grant a filing extension to 3 February; we accept Petitioner's exceptions and brief; and we deny the Employer's motion to strike.

In its answering brief, the Employer argues that the Administrative Law Judge was precluded under *Burns Security Services*, 256 NLRB 959 (1981), from considering as a basis for setting aside the election certain literature or statements that Petitioner purportedly alleged as objectionable for the first time at the hearing. Specifically, the Employer asserts that whereas Petitioner's Objection 15 alleged specific documents as objectionable, the Administrative Law Judge analyzed other literature that it distributed as well as its campaign speeches in considering this objection. The Employer also contends that the objection alleged these statements as misrepresentations, but that at the hearing Petitioner characterized them as threats. It further argues that Petitioner has altered the basis of its Objection 13 to allege that the Employer threatened to withhold or delay employees' wage increases during postelection contract negotiations with Petitioner and not during the preelection campaign as set forth in the objection. Finally, in the Employer's view, Petitioner also has shifted the legal theory of its Objection 6 which alleged that the Employer interfered with the election by telling employees in captive audience meetings that Petitioner wanted control of the Company's $40 million pension fund. The Employer notes that Petitioner now is alleging in its supporting brief that the statements constituted threats that employees would loss benefits if Petitioner gained control of the pension fund. In *Burns Security Service*, the Board held that it would not consider new matters raised by the objecting party after the time for filing objections had expired unless they involve newly discovered or previously unavailable evidence. Here, while it is true that Petitioner has raised allegations of objectionable conduct that do not exactly coincide with the precise wording of the objections, we find that they are sufficiently related to its objections to warrant our consideration of the merits of whether the Administrative Law Judge was correct in recommending that they be overruled.

[3] The election was conducted pursuant to a Second Supplemental Decision and Order Directing Third Election issued by the Board. The tally was: 777 for, and 1,107 against, Petitioner; there were 7 void ballots, and 5 challenged ballots, an insufficient number to affect the results.

the Administrative Law Judge's findings[4] and recommendations.[5]

Contrary to our dissenting colleague, we find that Petitioner's Objection 15 is lacking in merit. This objection essentially alleges that the Employer interfered with the election by "falsely suggesting . . . that employees could not speak to management themselves" if they selected the Union to represent them. The record evidence discloses that during the preelection campaign the Employer posted a leaflet on its bulletin board advising employees, *inter alia*, that "in a unionized plant individuals cannot come directly to supervisors to solve job related problems or to receive action or needed improvements." Our colleague finds that this statement and other similar statements the Employer disseminated on this subject amount to objectionable conduct that warrants setting aside the election results. We disagree.

In adopting the Administrative Law Judge's recommendation to overrule this objection, we rely on the evidence here that the Employer also posted a copy of Section 9(a) of the Act on its bulletin board before the election was held.[6] By so doing, the Employer specifically called attention to employees' rights under this section when they are represented by a bargaining agent.[7] And, therefore, employees were informed that they might continue to present their grievances directly to management, without union intervention, provided that such a grievance practice is not inconsistent with the terms of any existing collective-bargaining agreement. Under these circumstances, we find that the Employer's preelection statements clearly do not constitute an objectionable threat to eliminate a benefit granted employees, e.g., the opportunity to deal directly with the Employer.[8] Accordingly, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Drivers, Chauffeurs, Warehousemen and Helpers Local No. 71, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

MEMBER JENKINS, dissenting in part:

Though I agree with most of my colleagues' decision, I do not agree with their dismissal of Petitioner's Objection 15. The credited evidence undisputedly shows that the Employer posted a leaflet on its bulletin board that stated, *inter alia*, that "in

[4] Petitioner has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In recommending that Petitioner's Objection 6 be overruled, the Administrative Law Judge stated that Superintendent King's statements were "protected by Section 8(c) of the Act." We note that it is well settled that Sec. 8(c) applies only to unfair labor practice proceedings. *Dal-Tex Optical Co.*, 137 NLRB 1782, 1787, fn. 11 (1962). The Administrative Law Judge's misplaced reliance on Sec. 8(c) concerning the alleged objectionable conduct involved in this objection, however, does not affect the result and we have adopted his recommendation to overrule Objection 6.

Member Hunter notes, however, that, while Sec. 8(c) of the Act generally is applicable to unfair labor practice cases, he also finds it useful in determining the parameters of objectionable conduct in representation proceedings.

In recommending that Petitioner's Objection 15 be overruled, the Administrative Law Judge found that, on 12 August 1981 the Employer's superintendent of employee relations distributed a "memorandum to employees" concerning the impact that unionization would have on their capacity to communicate problems directly to management. In fact, as he found earlier in his Decision, this campaign document was distributed only to supervisory employees. It is clear from the record, however, that the Employer was aware that Petitioner generally had access to documents it distributed to supervisors and that at least some unit employees would read them. Accordingly, we do not find that correction of his misstatement affects the Administrative Law Judge's recommendation on this objection.

[5] In the absence of exceptions thereto, we adopt, *pro forma*, the Administrative Law Judge's recommendations that Petitioner's Objections 1 through 5, 7 through 12, 14, and 16 be overruled.

With respect to Petitioner's Objection 13, the Administrative Law Judge concluded that certain passing remarks by Supervisors Barnes and Rutledge were essentially an accurate statement of Board law and thus did not warrant setting aside the election. Applying the standard set out in *Enola Super Thrift*, 233 NLRB 409 (1977), we find that, assuming these statements could be construed as possibly objectionable, in any event they were too isolated in light of all the circumstances of this case, particularly given the large number of unit employees, to support an inference that they affected the election results.

[6] Sec. 9(a) provides as follows:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

[7] For this reason, we find that our dissenting colleagues' reliance on *Mead Nursing Home*, 265 NLRB 1115 (1982), and *Associated Roofing & Sheet Metal Co.*, 255 NLRB 1349 (1981), is misplaced.

Member Hunter does not agree in any event with the holdings of those cases. See his dissent in *Hahn Property Management Corp.*, 263 NLRB 586 (1982).

[8] In considering this objection, the Administrative Law Judge also noted that a "reasonable interpretation" of Petitioner's constitution tends to support the Employer's campaign statement that it contains a provision prohibiting "members from dealing directly with management on any problem at any time," a result contrary to Sec. 9(a) of the Act. We find it unnecessary to pass on the Administrative Law Judge's remarks in adopting his recommendation that this objection be overruled.

a unionized plant individuals cannot come directly to supervisors to solve job related problems or to receive action or needed improvements." It is plain that this statement and other similar statements, widely disseminated by the Employer, constitute a plain misstatement of the requirements of the statute and thus amount to a retaliatory threat to terminate unilaterally an existing benefit of employees to deal directly with the Employer if the employees selected the Union as their representative.[9] As I find merit in this objection, I would set aside the election and direct a new election.

[9] *Mead Nursing Home*, 265 NLRB 1115 (1982), and *Associated Roofing & Sheet Metal Co.*, 255 NLRB 1349 (1981).

That the Employer posted a copy of Sec. 9(a) of the Act on the bulletin board and cited a provision in the Union's constitution regarding its authority to process grievances may have some bearing on whether the Employer's statements constitute a misrepresentation of Sec. 9(a). However, it does not lessen or excuse the Employer's retaliatory threats to terminate existing benefits. Thus, the Employer did not limit itself to explaining that the Union will be a participant in employer-employee relations generally. Instead, the Employer threatened to cut off unilaterally the legally permissible direct dealing with its employees in retaliation for selecting a union. *Associated Roofing & Sheet Metal Co., supra* at 1350.

DECISION

STATEMENT OF THE CASE

PHIL W. SAUNDERS, Administrative Law Judge: Based on charges filed on various dates in the above-numbered cases by Drivers, Chauffeurs, Warehousemen and Helpers Local 71, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, the Petitioner, or the Charging Party, a consolidated complaint was issued on July 6, 1982,[1] against Fiber Industries, Inc., herein called Respondent, the Company, or Fiber, alleging a violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. Respondent filed answers denying it had engaged in the alleged matter. Both the Union and Respondent filed briefs in this matter.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation with a facility or plant in Salisbury, North Carolina, where it is engaged in the manufacture and sale of manmade fibers.

During the immediately preceding 12 months, which period is representative of all times material, Respondent received products from directly outside the State of North Carolina valued in excess of $50,000, during the same period Respondent shipped directly to points outside the State of North Carolina products valued in excess of $50,000.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On August 27 and 28, 1981, the Board conducted a representation election among the hourly production and maintenance employees at Respondent's Salisbury, North Carolina, plant. The Union received 777 votes and 1,107 votes were cast against it. The Union thereon filed 16 timely objections; Objection 16 incorporated by reference certain unfair labor practice charges. The Acting Regional Director then issued a consolidated complaint and directed a hearing on each of the objections.

During the course of the hearing before me, the parties settled the unfair labor practice issues which were not incorporated by the Union's objections, and I then granted the motion by the General Counsel to sever the representation case (11-RC-4714) from the C cases, and also the motion to withdraw the complaint in Case 11-CA-8258. The parties stipulated that the resolution of the unfair labor practice cases would not affect my jurisdiction to resolve the representation case.

In the final analysis, the issue now before me is whether the Company interfered with the August 1981 election in which the employees voted to reject representation by the Union.

Respondent's Salisbury plant has approximately 48 acres under roof where the Company manufactures polyester fiber. The Company has employed approximately 2,500 people of whom approximately 2,000 were hourly paid employees eligible to vote, and these 2,000 employees were supervised by about 175 members of management who had direct supervisory responsibility for hourly paid employees.

Background evidence shows that in recent years three elections have been held at the plant here in question. An election was conducted in July 1979 in which the Company won by a considerable margin, but on objections filed by the Union the Regional Director recommended that the election be set aside. This recommendation was adopted by the Board. The second election was held in March 1980 and resulted, after resolution of challenged ballots, in 1,005 votes in favor of the Union. However, the Company filed objections, and this second election was set aside by the Board. This sets the stage for the August 1981 election here in question.

It is clear from this record that all three elections at the Salisbury plant were preceded by a vigorous campaign on the part of both the Company and the Union. It is quite evident from this record that employees freely and openly campaign for and against the Union by engaging in debate and conversations, distributing literature, and wearing various paraphernalia from time to

[1] The Acting Regional Director consolidated Case 11-RC-4714 for hearing with Cases 11-CA-8258, 11-CA-8333, 11-CA-8390, 11-CA-8454, 11-CA-8516, 11-CA-8517, 11-CA-8985, 11-CA-9155, 11-CA-9410, 11-CA-10044, and 11-CA-10278 on April 9, 1982.

time. There was an "In-Plant Organizing Committee" made up of employees supporting the Union, and there was a "Stop the Union Committee" made up of employees opposed to the Union.

The Company suggests that it is difficult to image a more well-informed group of voters than those employees here who have experienced three fully debated election campaigns, and that the Union's objections in the instant proceeding should be viewed in light of these background facts because the ultimate issue is whether a free and fair election was conducted when considering the totality of the surrounding circumstances. The Company submits that the credible evidence fails to sustain any of the Union's Objections; at most the evidence establishes only a few isolated incidents which would have had no tendency to influence an election that the Union lost by over 300 votes.

Objection 1 states:

> On Monday, August 17, 1981,[2] supervisors conducted individual meetings with employees in which they emphasized the futility of collective bargaining and the inevitability of strikes.

Employee Paul Shrewsbury testified that, on August 17 or 18, he had a conversation with Foreman Jim Allen and, after they discussed work-related matters, Allen then stated that the Company had treated employees fairly and that employees did not need a union, and Allen also mentioned that he did not know how employees with a high payroll number would cope in the event the Union got in. He further testified that Allen then went on to mention the Air Traffic Controllers, Reynolds, Republic, and Ford and also mentioned something about Reynolds Aluminum.[3] Finally, Foreman Allen is alleged to have informed Shrewsbury that the Company had given the employees "a good raise" last year, but that he could not promise what employees would get this year, and that the Union did not guarantee employees anything, to which statement Shrewsbury responded, "Yes, I know, we would have all that to be negotiated in the contract."

Employee Gary Smith testified that, around 1 or 2 days before the August election, he was involved in a conversation with Foreman Jim Allen and Supervisor Don Coontz when Coontz stated, "If the Union come [sic] in, we would get only what the Company wanted to give us, that was all we would get." However, on cross-examination, Smith agreed that his prehearing affidavit gave a more accurate version of Coontz' alleged statement. The affidavit stated: "If the Union came in that it would not give the employees any more than what they wanted to."

A review of the record reveals that there is no evidence of individual meetings between supervisors and employees on or about August 17, much less meetings where supervisors emphasized the futility of collective bargaining and the inevitability of a strike. In this record there are only two conversations where a supervisor is alleged to have made a statement concerning the possible consequences of unionization, but, as indicated, neither of these conversations sufficiently supports this objection.

These two allege conversations, aside from being vague, fall short of threatening the futility of collective bargaining and the inevitability of strike. Indeed, these statements amount to nothing more than an expression of opinion on the relative merits of unionization or its rejection.[4]

Accordingly, Objection 1 is hereby overruled.

Objection 2 states:

> On August 24, 1981, the Company posted a leaflet misrepresenting the impact upon Teamster drivers of the Celanese sale of Wica to Union Oil.

The alleged statement is contained in a bulletin board notice that was posted by management between August 24 and 26 which, in part, reads:

> The Wica employees finally got rid of Local 71 in January, 1981, but not until Celanese had sold the Wica plant to Union Oil, which resulted in the discharge of the Wica Teamster truck drivers (about 15% of the workforce) who Union Oil did not need.[5]

Union Secretary-Treasurer Jimmy Wright testified that the Company "misrepresented" facts by stating that Union Oil "discharged" the truckdrivers, because the employees at Salisbury plant would interpret the word "discharge" to mean that the truckdrivers had engaged in misconduct, while in reality there was a severance agreement reached between the parties.

It appears to me that the notice here in question adequately reveals that the reason for the truckdrivers' discharge had nothing to do with misconduct, and the contention by the Union that the use of the term "discharge" in this notice was a substantial and material misrepresentation of fact is clearly without merit.

Within a few weeks after the close of the hearing in the instant case, the Board issued its decision in *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), where the Board held:

> We rule today that we will no longer probe into the truth or falsity of the parties' campaign statements, and that we will not set elections aside on the basis of misleading campaign statements. We will, however, intervene in cases where a party has used forged documents which render the voters unable to recognize propaganda for what is. Thus, we will set an election aside not because of the substance of the representation, but because of the deceptive manner in which it was made, a manner which renders employees unable to evaluate the forgery for what it is. As was the case in *Shopping Kart*, we will continue to protect against other campaign conduct,

[2] All dates are 1981 unless stated otherwise.

[3] At the time here in question both the Air Traffic Controllers and Republic were out on strike, which Shrewsbury admittedly did not realize or know about.

[4] See *Butler Shoes New York*, 263 NLRB 1031 (1982), and cases cited therein.

[5] See Union Exh. 10.

such as threats, promises, or the like, which interferes with employee free choice.[6]

It is quite clear that the decision in *Midland National Life* was partially based on the Board's concern that parties frequently use frivolous misrepresentation allegations and objections to delay the resolution of representation cases, and I am in agreement that the allegations set forth in the Union's Objection 2 highlift and justify the Board's concern. Objection 2 is hereby overruled.

Objection 3 states:

> Toward the end of the campaign, the Company distributed a reproduction of a Reader's Digest article concerning violence which created an atmosphere of fear.

The article in question was published by Reader's Digest during the month of August.[7] The article was then distributed during the campaign by Employee Relations Superintendent Dave Phillips to members of supervision "for their information," but it was not distributed to employees. However, employee Monte Blackwood testified that his foreman, Jim Turner, was showing the article to "everybody" and "laid it on his desk for everybody to see."[8]

Employee Samuel McCrary testified that the article here in question was passed out in the cutter bay area of the plant, but he did not identify who was distributing the article. Employee Harold Horton testified that employee Mary Williams had a copy of the Reader's Digest article here in question and was showing it to employees in the break area. Employee James Whisenhunt also testified that he saw the Reader's Digest article in a foreman's office.

As pointed out, the evidence in this record merely established that certain employees saw an article entitled "We'll Get Those Scabs" which appeared in the then current issue of the Reader's Digest. Significantly, the article discussed the Steelworkers Union and not the Teamsters. Further, there is no dispute as to the accuracy of the facts contained in the article. As further indicated, the article discussed events associated with a strike by the Steelworkers Union in Arkansas several years ago, and thus the subject of the article was remote from the election at the Salisbury plant in terms of (1) the different unions involved, (2) the lapse of several years' time, and (3) the geographic distance. Counsel for Respondent points out that he is not aware of any theory which could even remotely support the Union's position that this article, appearing in an internationally recognized publication, could create an atmosphere of fear that interfered with the holding a free and fair election involving the Teamsters Union and employees in Salisbury, North Carolina, in August 1981. Counsel further notes that there are certain cases involving events closely related in time, place, and subject matter, which instill such fear in the minds of employees so as to render a rational decision in an election impossible, but the situations in those cases are diametrically opposed to the current allegation contained in Objection 3.

I am in agreement that this is another example of the type of frivolous objections and delaying tactics that the Board was concerned about in *Midland National Life Insurance Co., supra.* Moreover, by the particular circumstances here, it would be virtually impossible to conclude that the event in question could have affected the results of the election. The article in no way related to the situation in Salisbury, as aforestated, and all indications in this record show that only a very few employees actually saw the article or were aware of it. Accordingly, this objection is overruled.

Objection 4 states:

> In the last days of the election, antiunion employees wore leaflets pinned to their clothing while working in the plant.

This objection involves a newspaper article which appeared in the Salisbury Post, the local newspaper, several days before the election concerning the closing of a Celanese plant in Canada due to lost production and sales caused by certain labor problems.[9]

Employee Samuel McCrary testified that this newspaper article was passed out in various "cutter bays" in his department, and also testified that some of the employees were wearing this newspaper article pinned to their clothing, but clarified on cross-examination that he only saw *one* employee doing this—a female employee named Althea. Employee Donald Ennis testified that he saw one elderly female employee wearing the article. Likewise, employee James Whisenhunt testified that he saw one lady wearing the article and, finally, employee Shirley Davidson testified that she saw employee Alta Barnhart wearing the article here in question on the first day of the election. Counsel for Respondent suggsts in his argument that all four witnesses saw the same employee. The evidence appears to support this analysis.

The right of employee to wear the newspaper article here in question pinned to their clothing (and other insignia) during an election campaign is unquestionably protected activity, and quite possibly the Company would have violated the Act had it insisted on the removal of the article.[10]

It should also be noted here, and it is undisputed, that employees supporting the Union also wore various campaign material on frequent occasions during the preelection period. It further appears to me that the newspaper article here in question also falls within the category of campaign statements referred to by the Board in *Midland*

[6] This decision overruled *Hollywood Ceramics*, 140 NLRB 221 (1962). Moreover, the Board in *Midland National Life Co.*, stated that the new rule would be applicable "to all pending cases in whatever stage."

[7] See C.P. Exh. 11.

[8] Blackwood also testified that Superintendent Ken King held up the article in a meeting, but he did not recall any reference to it during the meeting. King denied holding up the Reader's Digest article at the meeting. Blackwood testified that he was at the back of the room, and it was undisputed that King, as well as other superintendents, held up another document during the superintendents' meetings with employees, so it is likely that Blackwood mistakenly thought he saw King hold up the Reader's Digest article.

[9] See C.P. Exh. 22. As noted in this exhibit, Celanese is the parent company of Fiber.

[10] See *Howard Johnson Motor Lodge*, 261 NLRB 866, fn. 2 (1982).

National Life, supra (assuming it was misleading). Moreover, under the overall circumstances in this case, it would again be almost impossible to conclude that this one article could have affected the results of the election considering all of the numerous, constant, and continual handbilling, signs, hats, badges, shirts, posters, pocket holders, and other insignia of all types displayed and worn by each side.[11] Accordingly, this objection is overruled.

Objection 5 states:

> The Company permitted antiunion employees to move around in the plant and distribute antiunion literature, and also allowed antiunion employees to leave work areas early to go to the gates to distribute literature. The Company did not give pro-union employees the same rights.

Employee Harold Horton testified that on one unspecified date employee Charles Landis, an operator who works in the warehouse, came through his work area, the beaming area of the plant, and then went into the break area and distributed antiunion literature. He also testified that it was his understanding of company policy that employees were not allowed to leave their designated work area and go to another work area unless the reason was job related, and that Landis was not on his break at this time. Horton admitted on cross-examination that he had no knowledge as to whether Landis had entered the work area with his foreman's permission. He testified further that employees were free to take their breaks in their own work area or in adjacent break areas as long as they stayed "somewhere close by."

It was undisputed that Landis was not distributing literature in an actual *work* area, but rather was distributing the literature in a break area, and a review of the plant layout[12] reveals that a warehouse employee could pass through the beaming area to get to several adjacent break areas.

Employee Nellie Roberts testified that on August 13 she saw Landis distributing antiunion literature in a break area during third shift. She stated that Landis worked in the warehouse and the warehouse employees only worked the first and second shifts. On cross-examination Roberts testified that she saw Landis distributing the literature in question approximately 1-1/2 hours after the conclusion of his shift, but testified that she had no knowledge as to whether Landis was working overtime that evening.

Employee Willie Mae Sloan testified that she saw Landis in the main canteen on August 21 during the third shift distributing antiunion literature, and to her knowledge he was not working overtime. She also stated that, outside of working on your own shift, employees are not to be inside the plant.

Employee Douglas Overcash testified that during working hours he and another employee were on their way to answer a fire alarm on August 26 when Charles Landis approached them and attempted to distribute company literature to them. Overcash testified that later in the day they reported the incident to their foreman, Pete Conner, and Conner then stated that he himself had not seen Landis, but that if it happened again to report it and he would take care of the matter.

This record shows that the Company maintains a valid no-solicitation and no-distrubution rule which limits solicitation and distribution only during an employee's working time, but excluding breaks and other free time. As indicated, discriminate enforcement of this rule could be established by showing that the Company permitted employees opposed to the Union to violate the rule while, at the same time, disciplining employees supporting the Union for violating the rule, and apparently the Union asserts and maintains that this has occurred with regard to Charles Landis in his distribution of company or antiunion literature.

As pointed out, there are several flaws with the Union's position. First, with the exception of the one incident related by Overcash, there is no evidence that any supervisor or member of management saw or knew of Landis' activity and, therefore, the Company cannot be charged with knowingly permitting a breach of its policy, and was therefore not in a position to do anything about any such infraction of its policy. With regard to the one incident related by Overcash, it was undisputed that Overcash's foreman did not witness Landis distributing antiunion literature to employees during their working time, but, nevertheless, Foreman Conner requested that Overcash report any similar incident in the future and assured him he would take the necessary corrective action.

As also indicated, the second difficulty with the Union's position is that all of the distribution by Landis took place in break areas except the incident involving Overcash, and the Act and company policy fully protected Landis' right to distribute literature in the break areas of the plant. Moreover, this record is replete with testimony from the Union's own witnesses that they too were permitted to distribute literature in the break or nonworking areas and they actively did so on numerous occasions.

In addition to the above, Respondent's employee relations superintendent, Dave Phillips, testified without contradiction that both employees supporting the Union (Mae Sloan) and employees opposed to the Union (Alvin Owens) were disciplined for distributing material during worktime.

Respondent also has a valid argument when pointing out that the lack of company knowledge concerning Landis' activities is also fatal to the Union's apparent position that the Company permitted Landis to enter the plant during off-duty hours for the purpose of distributing antiunion literature. Although some witnesses testified as to their belief of the existence of a rule prohibiting plant entrance during off-duty hours, others, both company and union witnesses, testified that there was no such rule and that employees were permitted to and did enter the plant during off-duty hours for numerous reasons, and assuming, *arguendo*, that Landis did enter the

[11] It should also be noted that during the campaign the Union established a "hot line" wherein their various messages to employees were transcribed by Union Representative Bill Grant into a cassette, and this, in turn, played over a telephone.

[12] Resp. Exh. 20.

plant during off-duty hours to distribute antiunion literature and the Company had knowledge of this fact, there was no dispute that other employees entered the plant during off-duty hours for other purposes. Moreover, the Board holds that it constitutes an unfair labor practice to bar an employee from the premises during off-duty hours when the employee's purpose for entering is to exercise his Section 7 rights while permitting employees to enter the plant during off-duty for other reasons. Thus, from the testimony it would appear that, had the Company taken steps to bar Landis from the plant during off-duty hours, the Company may well have violated his Section 7 rights.

The remaining instances pertaining to this objection concern two employees who allegedly departed the plant prior to the end of their shifts for the purpose of distributing antiunion literature at the gates. Employee James Powell testified that on a date unknown he saw employee Betty Brown leave the plant and go to the gate at 6:47 to pass out antiunion literature when her shift did not end until 7 o'clock. Employee Gary Smith testified that he saw employee Dot Lindsay, who he "believed" worked in C crew, at the plant gate distributing antiunion literature at 10:30 p.m. on August 26 or 27, and at a time when C crew was scheduled to work until 11 p.m. However, on cross-examination, Smith admitted that he did not know for sure if Lindsay was a C crew employee.

I am in agreement that the evidence in this record fails to adequately establish that either Brown or Lindsay departed from the plant on their shifts at a time they should have been working. Furthermore, as also indicated, there was no evidence that any supervisor or member of management knew that they departed the plant before the end of the shift even if they were scheduled to work. The testimony in this record also revealed that the Company does not use timeclocks at the Salisbury plant, and given the great number of employees and the vast size of the facility, as aforestated, it would obviously not be very difficult for an employe to depart work shortly before the end of the shift and do so without detection by a supervisor or management official.

The evidence here fails to establish that employees opposed to the Union engaged in activity in which employees supporting the Union were not allowed to engage. More importantly, there was no evidence that the Company permitted or condoned any breach of its lawful restrictions on the distribution of literature or prohibited protected activity by any employee. Objection 5 has no merit, and is hereby overruled.

Objection 6 states:

> In captive audience meetings on August 24 and 25, supervisors said that Teamsters wanted control of the Company's $40 million pension fund. This created a confusing picture of the pension fund.

On August 24 and 25, the Company conducted numerous meetings for employees where the plant's 11 unit superintendents delivered speeches concerning the upcoming election, and the subeject of pension plans was addressed during the speeches.[13] The exact words of 4 of the 11 superintendents are in issue, but the *basic* speech relating to pensions and given by all, reads as follows:

> Six—Your FII Pension Plan currently has millions of dollars allocated and readily available for Salisbury employees' retirement. Over the last 11 years alone, nearly 40 million dollars has been set aside by Fiber for Salisbury employee pensions. This money is safe and secure, and not a nickel in this plan has ever been lost, misplaced, or stolen. Supposed the Teamsters came into negotiations and wanted to take this 40 million dollars and/or all future contributions set aside for you by Fiber. In the light of all the problems you and everyone else in this country have been made aware of concerning money problems of the Teamsters Pension Plan, it would seem that the last thing any individual would want to do is gamble on losing their pension money in the Teamsters Pension Plan. This fact deserves particularly serious consideration in light of the highly publicized financial difficulties projected for our national security system.[14]

Ken King was the superintendent of the filament processing unit in the plant, and he conducted four meetings on August 24 and 25 for the employees in his unit. Three employees offered testimony for the Union concerning King's statements regarding pensions during his speech.

Employee Monte Blackwood testified that employees "were read a text by Mr. King, a written text pertaining to the organizing campaign." Blackwood testified:

> He made a reference to the dollar amount of $40,000,000 that was in the company pension fund and that if the Teamsters came into the plant that they would attempt to take over the pension fund and we would not know what happened to the money from then on.

On cross-examination Blackwood was confronted with an affidavit he gave an NLRB agent on August 25, the day after the speech, and he stated in this affidavit that in the speech here in question King said that "if we voted the Union in, negotiations would have to start from scratch if the Company agreed to the terms." However, in an affidavit given 1 month later, on September 21, Blackwood was shown exerpts of King's speech by an NLRB agent and then stated, "King said that everything would be subject to negotiations. He did not come right out and say that negotiations would start from scratch but he said that everything was subject to negotiations. The impression that I got was that they would bargain from scratch." From the above, it is quite obvious that Blackwood was inclined to testify as to his "im-

[13] Although employees were asked to attend and were paid for the time that they did attendance was voluntary and, accordingly, some employees did not attend, but no employee was ever disciplined for failure to attend.

[14] Admittedly, the Union made a leaflet response to these speeches and in so doing pointed out certain features and guarantees under the Employee Retirement Income Security Act of 1974. See Resp. Exh. 4.

pressions" rather than actual words. This record reflects the following testimony by Blackwood:

> Q. Well, do you lie?
> A. Who don't
> Q. You don't lie?
> A. I said "who don't."
> Q. You lie, too, then, is that correct?
> A. I do, You do. Everybody does.

On the basis of the above, and his demeanor, I have discredited Blackwood's testimony.

Harold Horton testified that Superintendent King mentioned pensions in his speech and stated that the "$40,000,000 that was set aside for our retirement and everything but that if the Union got in, that that would be taken away from us, and that they would have to start over with a new type plan."

On cross-examination Horton admitted that King read from a prepared statement, and further admitted that his direct testimony concerning King's statements were not his exact words and indeed that he had "closed his mind" to parts of the speech.

Employee Douglas Overcash testified as follows concerning King's statements on pensions:

> Well, he made a remark that the $40,000,000 that the plant had put up for the people to retire on would be turned over to the union and the union could do whatever they wished with it, and the people that were old enough to retire at this time would be out of luck; and the ones that had been there for ten years or longer, they would have to start over with a new pension plan.

This record reveals that Overcash gave an affidavit to Teamsters representative Bill Grant less than 1 month after the election, on September 15, which stated that the Company had posted a bulletin board notice which stated "that if the Union came in, that we would have our wages frozen and would not get out next scheduled wage increase." During his testimony before me he repeatedly insisted that the bulletin board notice used the word "frozen," but then admitted that the bulletin board notice that he saw (Union Exh. 6) did not contain the word "frozen" or state what he claimed in his affidavit, and then finally admitted that his affidavit was based on his opinion of what the bulletin board notice contained. I am in agreement that, if Overcash did not recall within 1 month after the election the exact words used in bulletin board notice, then it would be difficult to accept his claim that later he recalled the exact words of Superintendent King concerning pensions. His testimony is not credited.

Ken King testified that he spoke from a prepared text, a text which had previously been introduced into evidence by the Union.[15] He testified that he read verbatim that which appears in the text of his speech on pension plans.[16]

John Daniels was unit superintendent for the productions services department. His unit consisted of approximately 100 employees and 11 foremen and supervisors, and he too gave four speeches on August 24 and 25. Two employees testified concerning his statement on pensions.

Employee Donald Ennis, who said it appeared as though Daniels was reading his speech, testified as follows:

> He said that the company pension plan had approximately $40,000,000 in it, and that not one nickel had ever been misplaced and that the Teamsters would like to get their hands in this money.

Employee Nellis Roberts worked on the same crew as Ennis and attended the same speech. She testified that Daniels stated that "the Teamsters would love to get their hands on $40,000,000 pension fund."

John Daniels testified that he read from a prepared text, the text which was introduced into evidence by the Union.[17] A review of the text of Daniels' speech reveals that his statement concerning pension plans were practically identical to the statement made by King.[18]

Larry Macon was unit superintendent for the staple I unit, and two employees testified concerning his statements on the subject of pensions during his four speeches on August 24 and 25.

Employee James Whisenhunt testified as follows:

> He was reading off a paper but he would wander, look up, and look around, and he said that Fiber had $400,000,000 in a pension plant that the Teamsters would like to get their hands on.

Employee Gary Smith similarly testified that Superintendent Macon stated that "Fiber had set aside $40,000,000 for Fiber employees; if the Union come in, he said, the Union, that the Union would love to get their hands on that money."

Like the other superintendents, Macon testified that he read from a prepared text, and the text was introduced into evidence as Charging Party's Exhibit 16. Macon stated that he stayed with his text except when he read from the Teamsters constitution and when he read from a union postcard sent to employees (again unrelated to pensions).

Superintendent Darrell Loach read from the prepared text, and which was introduced into evidence as Charg-

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[15] See C.P. Exh. 17.

[16] Although King varied from the text on two occasions, these two departures concerned different subjects, and were contemplated by the prepared text itself. Thus, page one of King's speech calls for him to "comment on Union mailing [postcards] from Washington," and page three of the text states, "read from the constitution."

[17] See C.P. Exh. 19.

[18] Daniels testified that he made no changes in the *substance* of the text he read, but stated he changed some of the wording to suit his preference as to how to say things. He also made a reference to postcards mailed by the Union to employees and read an excerpt from the union constitution (neither relating to the subject matter of pensions). Daniels said that all his variations from the written text were approved by lawyers representing the Company. It is undisputed that each superintendent had the same typed text, each superintendent was allowed to make handwritten changes with approval of legal counsel. However, a review of the speeches in evidence reveals that the changes are minor in nature and nonsubstantive with the result being that each superintendent gave essentially the same speech.

ing Party's Exhibit 18. Loach was unit superintendent for staple II unit at the time of the election. Four employees testified concerning statements he made on the subject of pensions during the August 24 and 25 meetings.

Employee Samuel McCrary's testimony on Loach's statement concerning pensions were as follows:

> They said that if the Teamsters came in, we would lose all our pension. They said that they would take it, they said, all of the money in the fund that Fiber had, that they would just take it on out of town and we would never see no more it.

As pointed out, that following colloquy with McCrary on cross-examination is enlightening for purposes of credibility:

> Q. And would you tell me again exactly what it was that Mr. Loach said about the pension fund in that speech you attended, and I want you to think and be careful and give us the best you can his exact words now.
>
> A. Right.
>
> Q. Very candid?
>
> A. Right. I will do it "off the top of my head" if I can. He said that if the Teamsters came to town, the pension fund would be gone. He said that the air controllers strike indicated to us that we would be, this is exactly like what, this is just exactly like them, if the Teamsters stayed in town.
>
> Q. That is exactly what you remember Mr. Loach saying about that pension fund, is that right?
>
> A. Right, right of the top, just a brief synopsis of it, yes, sir.
>
> Q. Well, now, I don't want a brief synopsis. I want you to give me Mr. Loach's exact words.
>
> A. Well, now, I don't have a memory like that.
>
> Q. Well, you said that you remembered it clearly?
>
> A. No, I didn't say I had a television memory. I didn't say that I could give you point blank verbatim of what he said.

Actually, during this testimony, McCrary gave several different accounts of what Loach said concerning pensions, and I am in agreement that, if any of the several versions given by McCrary as to what Superintendent Loach said is to be credited, it should be that which appeared in his affidavit which was given less than a month after the election. In that affidavit, he stated:

> On August 25, 1981, at 6:48 a.m. I attended a meeting which was conducted by Darrell Loach, superintendent. Mr. Loach said the Company had $40,000,000 in the Company pension plan that the Teamsters would like to get their hands on.

Indeed, McCrary finally agreed that what he had stated in his affidavit was correct.

When employees Shirley Davidson was asked what Superintendent Loach said concerning a pension plan, she testified:

> Yes. He introduced himself and he stated that he was reading from a prepared statement, and he stated that Fiber Industries had $40,000,000 set aside for the Fiber employees for their pension, and that if the Union was elected that they would have to turn the money, $40,000,000 over to the Union.

On cross-examination Davidson admitted that she had not quoted Loach word for word and that she could not do so—that she was stating what she "got out" of his speech. The Company points out that there are also additional reasons Davidson's testimony should not be credited—she testified that for 2 years, and through three elections, a member of management was providing her with company documents and which she, in turn, was providing to Teamsters Representative Bill Grant. Davidson further testified that she had met with this person in management on many occasions and that they had talked with one another on the telephone quite frequently. However, she testified that she did not know the person's name, and then also was unable to point him out when she was presented with a picture of all members of management, and her explanation for the inability to identify the management individual who had provided her with company information for 2 years was that he "was white" and all "white boys look alike." I am in agreement that a review of her testimony can only lead to the conclusion that she did not want to reveal the identify of the person and she tailored her testimony to suit the Union's best interests, and her testimony is wholly unworthy of belief.

Employee James Powell also testified concerning Loach's remarks on pensions. When asked what Loach said concerning pensions, he responded:

> Well, three things that I can remember, that struck with me; be brought up the fact that Fiber Industries had a forty million pension fund and that the Teamsters would like to get their hands on it and he said something about shop stewards would have super seniority or something like that; and the other one that the shop stewards wouldn't have to pay any Union dues.

Counsel for Respondent points out in its argument that it is obvious that Powell was very well prepared to testify—that, when asked to relate what Loach said concerning pensions, he immediately responded with testimony on all three subject matters which the Union had alleged to be objectionable in the speech.

Finally, employee Willie Mae Sloan testified as follows concerning Loach's statements on pensions:

> He stated that there were forty million dollars in the pension fund, that the Teamsters would like to get their hands on it and of the forty million, not five cents of it had ever been misplaced; and considering the condition of social security, it was nice to know that we had something else to rely on.

Like the others, Superintendent Loach read from a prepared text at the meetings with his employees and

stated that there were only two instances where he deviated from the written speech: one, relative to the union postcards, and the other when he read one section of the Teamsters constitutions.[19]

Counsel for the Petitioner contends in his argument that employees understood the superintendent to say that the Union wanted to take over the $40 million Fiber pension fund and would misuse the fund, that this scared the employees "half to death," and before the speeches there had been no suggestion that the Union wanted control of the Company's plan.[20]

Counsel for the Petitioner further argues that even assuming, *arguendo*, that each superintendent read the speech in question and did not depart from the text on the pension issue, the Supreme Court has held that the relevant issue is what the employees understood, and the testimony of the employees clearly reflects their understanding of the Company's message. Moreover, in balancing the Section 7 rights of employees and the Section 8(c) rights of employers, the Board must "take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear," and citing *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969).

It is also argued that because this case was tried when *Hollywood Ceramics Co.*, 140 NLRB 221 (1962), was in force, the Company had ample notice that the truth or falsify of its pension remarks was at issue, but the Company offered no evidence that there was a $40 million pension fund allocated specifically for the hourly production and maintenance employees at Salisbury or that the Union had indicated a desire to control the fund in any way, and thus there is no "objective fact" supporting he speech's major premises.

In summary, maintains the Charging Party, the Company threw a "red-herring" into the campaign at the last moment to scare employees with the loss of valuable service credits and vested rights. Such losses were contingent upon events well within the Company's control, and the superintendents' speeches were calculated to suggest that certification of the Union and a resulting contract would probably result in lost pension benefits.

In making my final conclusions as to this objection, I will initially turn to the remarks relative to pensions made by Superintendent King. First, as previously noted, the witnesses testified and agreed that King appeared to be reading a prepared text. Second, it was undisputed that King, as well as the other superintendents, submitted the prepared text to the Company's counsel for legal approval before making its speeches, and, as pointed out, it seems highly unlikely that the Company would take the precautionary steps of having its counsel review the written text and then allow the speakers to present a speech that did not follow the legally approved text. Third, the testimony of employees Blackwood, Horton, and Overcash differ significantly as to what King allegedly stated, concerning pensions. Although these employees were on different crews and, therefore, apparently attended different meetings, it is clear that King made the same statements in each meeting. Fourth, despite the fact that a good many employees attended each meetings, the Union did not offer any additional employees to coroborate the testimony of these three witnesses concerning what was said during these meetings. Finally, the hearing before me was held almost 1 year after the speeches in question were delivered, and it would have been extremely difficult for these witnesses to recall verbatim King's remarks and, indeed, most witnesses admitted they could not do so.

It also appears from the record that one of the Union's primary complaints concerning this matter is that the $40 million figure referred to is inaccurate. However, the Union did not offer any evidence to support this allegation while Respondent Employee Relations Superintendent Dave Phillips testified that the figure was accurate according to his information. Nonetheless, as also indicated, the Board's decision in *Midland National Life Insurance Co.*, discussed *supra*, moots this alleged misrepresentation issue even if it was one, and this decision also moots the Union's apparent contention that it is objectionable for the Company to state that the Union *might* want to negotiate for control over this $40 million. Moreover, any claim that King's statements constitute a threat to employees that they would lose their pension plan in the event of unionization is totally without merit.[21] The remarks made in his speech were merely a statement of an opinion as to what could occur depending on the discussions with the Union. Thus, King's statements, like the other superintendents, were based on the premise, beyond the Company's control, that the Union would attempt to negotiate for the employees' inclusion in the Teamsters pension plan. As such, the statements are within the realm of free speech and protected by Section 8(c) of the Act.

Superintendent John Daniels also followed his written text on pensions as outlined in the *basic speech* set for herein, and although neither employees Ennis nor Roberts quoted Daniels verbatim, their testimony closely follows that which appears in the text of Daniel's speech.

[19] The Union appeared to find some significance in the fact that Loach had given an affidavit which stated that all superintendents gave the same speech and that the speeches were read verbatim. Although the superintendents made certain additional statements which do not appear in the prepared text and each superintendent made some minor, nonsubstantive changes, as aforestated, it is obvious that they all read the speeches and they all gave the same *basic* speech, as aforestated. Therefore, the above statement by Loach in his affidavit is essentially true.

[20] It appears that the hourly production and maintenance employees at Respondent's Salisbury plant participate in the Celanese Retirement Income Plan. It also appears that Fiber once had a separate pension plan but, sometime prior to 1977, this plan was merged into the Celanese plan. Fiber itself has three plants, but there is no separate pension fund or sum of money allocated to the employees at the Fiber plant in Salisbury. Employee Relations Superintendent David Phillips derived the $40 million figure here in question by allocating the percentage of the Celanese plan he believed attributable to the Salisbury plant based on the number of active employees, but he did not consult an actuary and he does not know if his assumptions are actuarially sound.

[21] As previously set forth, King credibly denied statements attributed to him that the Teamsters would take over or do away with the pension and employees would not know what happened to the money; he did not say that negotiations would have to start from scratch; and King also credibly denied stating that the older employees would be out of luck and would have to start over if the Union won the election.

The statements made by Daniels on the occasion in question were entirely permissible.

Superintendent Larry Macon's prepared text dealing with pension is also accepted as his exact statements and entirely permissible.[22]

Superintendent Darrell Loach's prepared text on pensions is also accepted as his statements on the occasions in question and were permissible free speech. Objection 6 is hereby overruled.[23]

Objection 7 states:

> In captive audience meetings, supervisors mislead employees by stating that all Teamster stewards had superseniority, paid no dues and were paid a salary.

In this record there is considerable testimony and documentary evidence on this objection but, in view of recent developments, it would serve no useful point to analyze or detail this evidence. The objection alleges that the Company "mislead" employees, and the Board in *Midland National Life Insurance Co., supra*, held that misleading campaign statements will no longer for the basis for setting aside an election.

This record reveals that the subject matter of superseniority was probably crystalized by the employees' "Stop the Union Committee" in a handout about a week before the election.[24] However, Union Representative Bill Grant admitted that he knew of one location or plant in Los Angeles where Teamsters stewards were paid a salary equal to their union dues. Finally, as also pointed out, the Union had an opportunity to respond to the statements relative to this matter, and did respond on August 26 before the election.[25]

Accordingly, this Objection is overruled.

Objection 8 states

> The NLRB supplied pencils for use in the election. These pencils had the word "No" on them. The Union asked the Board agents to substitute the pencils and the agents refused.

This record shows that the pencils used in the August 27 and 28 election were imprinted with "NO. 2" on them—referring to the type of lead in the pencil. It is undisputed that these pencils were provided by the NLRB and that there were no other pencils available to use in place of them.

It is common knowledge, of course, that most pencils do contain the marking "NO." and then followed by a certain number on them which indicates the type of lead in the pencil.

Respondent argues that it is both "absurb" and "frivolous" for the Union to suggest that this marking on the pencils somehow interfered with an election which the Union lost by over 300 votes and, significantly, the Union did not present evidence that a single voter noticed the markings on the pencils used in the election.[26]

As pointed out, the Union can hardly suggest that the presence of the pencils impaired the Board's neutrality in the eyes of the employees because no one other than the parties directly involved knew that the Board provided the pencils. The Board has held that the appearance of the words "yes" or "no" in a polling area, without more, will not be grounds for setting aside an election. *Lockwood Farms*, 178 NLRB 226 (1969) (vote no on a hat). Moreover, the Board has consistently held that wearing stickers, buttons, and similar campaign insignia by participants as well as observers at an election is not, without more, prejudicial.[27]

Accordingly, Objection 8 is without merit and is overruled.

Objection 9 states:

> On August 26 through 28, the Company or antiunion employees distributed an article creating the false impression that Teamster pension funds are controlled by organized crime.

The Union withdrew this objection at the hearing before me and, therefore, it is no longer before me.

Objection 10 states:

> The Company assisted the Stop the Union Committee by reproducing its literature.

As far as I can ascertain, the Union did not present any evidence that the Company assisted the "Stop the Union Committee" by reproducing its literature or by any other means. Accordingly, this objection is overruled.[28]

Objection 11 states:

> At least one employee distributing computer printouts needed by employees in their work distributed computer printouts bearing the words "Vote No" on the reverse side.

Employee Shirley Davidson testified that on August 26 she received a telephone call from an employee named Ely who told her to look at her "lab printout."[29] Davidson testified that, upon receiving this call, she then checked the lab printout and discovered that someone had written the words "Vote No" on the back of the printout; there were approximately 10 such printouts

[22] Counsel for Respondent points out that even, if there was an implied *inference* from Macon's remarks that the Teamsters would like to "get their hands" on the $40 million pension money, there is still nothing illegal or objectionable about Macon's comments on the subject of pensions.

[23] The testimony at the trial by employees McCrary and Davidson has been rejected on the basis as previously set forth herein. Moreover, Loach was essentially corroborated even in the testimony by employees Sloan and Powell, as well as by the statement in McCrary's affidavit given shortly after the speech here in question.

[24] See Resp. Exh. 13.

[25] See Resp. Exh. 2.

[26] Although employee Shirley Davidson, an observer for the Union at the election, saw the pencils in question, she saw them at the preelection conference where she was privy to all the circumstances surrounding the use of the pencils.

[27] *Delaware Mills*, 123 NLRB 943 (1959); *Larkwood Farms, supra.*

[28] In its brief, the Petitioner presented arguments only as to their Objections 6, 13, 15, 16.

[29] A "lab printout" is a computer printout distributed by laboratory personnel to certain operators several times a day given a quality report. See C.P. Exhs. 24-a through e and also C.P. Exh. 25.

with the words "Vote No" written on the back and, upon seeing the printouts, Davidson then called employee Terry Foster and apparently accused her of being responsible.

The Union did not offer any evidence that the Company was either responsible for this incident or was even aware it occurred. The Union's position of this objection is that "the Company allowed certain campaigning by non-Union people which was not allowed to Union supporters." However, as indicated, there is no evidence whatsoever that the Company allowed or was aware of this activity and, admittedly, Davidson was only talking with other employees about these printouts, and in her testimony there was not even a serious implication that management was involved.

This Objection is without merit and is overruled.

Objecton 12 states:

> During the pre-election period, the Company shut down machines near the entrances to the plant so that employees entering the plant would believe that the Company could close the plant.

Employee Samuel McCrary testified that on the day preceding the election the Company shut down "practically all" of its its machines, including draw frames, cutters, and bailers, "that it sounded like a tomb in there it was so quite." He testified that the equipment was restarted "as soon as the results (of the election) were in." However, on cross-examination McCrary admitted that the Company shuts down machines from time to time for maintenance and because of reduced production requirements, and that this occurs on a weekly basis. He also admitted that no foreman or supervisor made any comment about any machines being shut down.

Employee Nellis Roberts testified that approximately 2 weeks before the election she entered the south or back employee entrance and noticed that machinery was shut down, and that "directly after" the union campaign it started up again. On cross-examination she clarified her testimony to the extent that only 4 of 40 staple machines were shut down, and then admitted that these machines have been shut down before and that it is not unusual for machines to be shut down.

Employee Gary Smith testified that approximately 2 weeks before the election he entered the back gate and "over half the machines were shut down" and that they stayed down until 2 weeks after the election. Smith testified on cross-examination that 6 of the 32 machines in the area were shut down, but he too admitted that machines are shut down regularly for maintenance and due to lack of production needs. Moreover, Smith admitted that he did not work in the staple area where these machines were located, and that he had no knowledge of the production requirements in those areas, and said that no foreman or supervisor made any statements concerning the machines that were were shut down.

Employee Willie Mae Sloan, who works in the staple area, testified that three CP lines—H-11, H-19—and one other were shut down sometime in the preelection period and were restarted on September 1. On cross-examination, Sloan admitted that the Company shuts down machines "at different intervals" due to varying production and maintenance requirements. She testified that no employees were laid off as a result of the shutdown and that she did not hear any foreman or supervisor say anything about the machines which were shut down.

Unit Superintendent Darrell Loach, who controls the staple area where the machines in question are located, testified that the various machines in his unit are routinely shut down to maintenance or production requirements, but that no machinery has ever been shut down in his area for any reason other than maintenance, power failure, or production reasons. Moreover, his testimony was corroborated by Employee Relations Superintendent Dave Phillips, and the Company also introduced into evidence the actual production records for the staple unit during the year of 1981.[30]

In the final analysis here, the actual production records for the staple unit for 1981 disprove the contention that the Company shut down a large number of machines before the election and restarted them after the election with the purpose of creating the impression that the plant would close. The credited evidence clearly reveals that machines are routinely shut down for production and maintenance reasons, and there is no evidence that any supervisor or management official made any statement concerning the shutdown, much less a statement which would create the impression or inference that the shutdown was related to the election.

This objection has no merit and is overruled.

Objection 13 states:

> The Company implied that it could not give regular annual wage increases during the Union campaign.

It appears that this objection concerns a bulletin board notice which was posted before the election, statements made by certain unit superintendents during their speeches on August 24 and 25, and a conversation between a foreman and employee. The Company has a past history of granting a wage increase each year during the fourth quarter, normally October or November.

The Company posted a bulletin board notice entitled "More Questions Concerning Negotiations" on or about August 20 or 21, advising employees as follows:

> There have been a number of questions in several units about how our normal wage increase in the fall might be affected if the union wins the election. The answer to this question is that we do not know—we cannot predict whether the Company

[30] Resp. Exh. 19—as pointed out, the staple area has 20 polymerization (CP) lines which are designated as H-1 through H-20, and a review of the 1981 records reveals that entering the month of August only 4 machines were shut down—H-11, H-18, H-19 and H-20—H-11 was shut down on July 31 and was not restarted until November 17; and H-18 was also shut down on July 31 and was not restarted until November 2. H-19 was shut down on June 21 and was restarted on August 4; and H-20 was shut down on July 13 and was restarted on September 14. In fact, during the month of August, only one machine was shut down (H-17) and it was shut down on August 6 and restarted on September 8. As indicated, a review of the entire year reveals that, consistent with the testimony of the witnesses, machines in the staple area are routinely shut down and routinely restarted from time to time.

and the union could agree in negotiations concerning a wage increase, or how long the negotiating process would take.

If the union wins the election, any wage increase and the time of any wage increase (like all other matters involving wages, benefits, hours and working conditions) will be subject to negotiations. No one knows what would be the results of contract negotiations; however, two things are certain:

(1) The Company could not legally give a wage increase until it negotiated with the union.
(2) There would be no changes in present wages until the company and union agreed.*

One possibility is that all wages and benefits would remain the same until the company and union completed negotiations and agreed on all matters in a contract, even though negotiations extend beyond the time of year when wage increases are normally given. In some situations the company and the union might never reach agreement.

As the U.S. Court case posted earlier this week stated, the right to union representation does not mean the right to a better deal.

* If a company and union became deadlocked and could not agree, the company would be free to give what it last offered during negotiations.

Employees James Powell testified on direct examination that "we were all discussing our new benefits that we thought that we might get a pay raise," when Supervisor Ott Rutledge stated "there will probably be nothing done until the union matter was settled." On cross-examination, Powell testified that this conversation concerned the normal November wage increase and that their discussion occurred sometime in July or August.

Employee Donald Ennis' testified that Foreman Tom Barnes told him that it would be illegal for the Company to give a raise during a union campaign.

The remaining matters bearing on this objection pertaining to wages relate to the unit superintendents' speeches—those of King, Daniels, Macon, and Loach. The basic draft speech read by Respondent's superintendents here in question provided, in part, as follows:

> Said another way, in negotiations the Teamsters could either accept what the company is willing to give, or they could try to get more than the company is able to pay. If this is the situation, it is possible that negotiations could be long and drawn out. I won't discuss the possibility of a strike.
>
> * * * * *
>
> If the union wins the election, the timing and amount of any wage increase (like all other matters involved wages, benefits, hours and working conditions) will be subject to negotiations. Without a union, employees at this plant have received a fall wage increase each year for the past 14 years, and you haven't had to lose two hours pay each month to get them.

Employee Gary Smith testified that, at the meeting he attended, Superintendent Macon stated that "if the Union come in, we would have to both negotiate a contract before we got our wage increase." As previously discussed, Macon testified that he read a prepared text and that the text states, and he did in fact state that "if the Union wins the election, the timing and amount of any wage increase (like all others matters involving wages, benefits, hours and working conditions) will be subject to negotiations."

Employee Samuel McCrary testified that Superintendent Darrell Loach said, "it had been the history of Fiber Industries, that if they came in—that they had always given a raise—but if the Teamsters came in, they would doubt that we got a raise" and that there was doubt "because they probably wouldn't make any money. McCrary's prehearing affidavit, given only a month after the speech, differed significantly from his testimony. In the affidavit, McCrary stated that Loach said that "Fiber had the habit of giving the wage increases but said he did not know how the Union coming in would affect the year's increase. McCrary was contradictory in his testimony and also admitted to giving testimony that did not represent Loach's exact words. For this reason, as well as those discussed previously herein, I credit Loach's testimony that he read from his prepared text which states, "If the union wins the election, the timing and amount of any wage increase will be subject to negotiations."

Employee Shirley Davidson testified that Loach said, "the annual wage increase that we usually get, if the Union was elected, that we wouldn't get the wage increase, that it would have to be negotiated." As previously discussed, Davidson was an evasive witness who is not credited, and I have accepted Loach's statement on this subject matter contained in his prepared text.

Employee Willie Mae Sloan testified that, in the meeting she attended, Loach stated that "the Celanese Plants have already gotten their 1981 wage increase; and that our wage increase with the Union in would be subjected to negotiations and no one knew how long that could take." As pointed out, although Sloan's testimony does not follow Loach's prepared text verbatim, it reflects essentially the statement made by Loach, i.e., any wage increase would be subject to negotiations if the Union won the election.

Employee Nellie Roberts testified that Superintendent Daniels stated in his speech "that the Celanese Corporation had already given their 1981 pay raises, and while the Teamsters were negotiating, negotiating a contract, the Company did not have to give us anything." This testimony again essentially reflects what Daniels told the employees in reading from his prepared text.

Counsel for the Petitioner points out that it is "hornbook law" that, during a union organizing campaign, an employer must act toward his employees as if there were no organizing campaign; thus, if an employer would not normally give a wage increase in March, it could not do so during a union campaign absent evidence that the increase was planned before the campaign. Conversely, if an employer always gives an increase in March, it cannot withhold the increase merely because of the union cam-

paign. Further, that this case differs from the general rule in only one respect, the scheduled increase would occur after the election, when wage increases are normally mandatory subjects of bargaining, but here the general rule still applies. Moreover, an employer violates Section 8(a)(1) of the Act by suggesting that negotiations could be drawn out and that during the labor controversy wages would be frozen, citing *Craw & Son*, 227 NLRB 601, 607 (1976), enfd. in pertinent part 565 F.2d 1267, 1271 (3d Cir. 1977); *General Motors Acceptance Corp.*, 196 NLRB 137 (1972), enfd. 476 F.2d 850, 854 (1st Cir. 1973); *Liberty Telephone*, 204 NLRB 317, 317–318 (1973); *JFB Mfg., Inc.*, 208 NLRB 2, 6 (1973). Cf. *NLRB v. Williamsburg Steel Products*, 369 U.S. 736, 746 (1962). Counsel for the Union also points out that the rationale for this policy is simple—the terms and conditions of employment include not only the terms in effect at a particular instant but also "the normal foreseeable expectations arising out of the (employment) relationship, including the expected weekly wage, the usual promotion policy, *anticipated wage increases*, customary bonuses and vacations, and *other announced or expected benefits*, [*Emphasis supplied.*]" *citing Liberty Telephone, supra* and applying these principles to the instant case, it is clear, as Doug Overcash testified, that employees were told wages would be frozen if the Union were certified, that although the Company never used the word "frozen" this is the logical and necessary implication of both the notice and the speeches in question, and by these means the employees were led to believe that they would get a wage increase in November as they had for at least the 10 past Novembers, unless the Union won the election—subject to that one condition they were promised an increase, but they would not get an increase until either a contract was completed after lengthy negotiations or the parties reached impasse, and even if the parties reached impasse and the Company was "free" to implement its last offer, the Company still did not promise to grant a wage increase.

In reaching my conclusions as to this objection, it should first be noted that the bulletin board notice here in question does not discuss the subject of wage increases during a union campaign, as alleged in this objection, but rather addresses the various questions which had been raised by employees concerning the status of a possible wage increase during contract negotiations if the Union won the election. Possibly, the language in the notice which would be objectionable to the Union is the sentence which states:

> One possibility is that all wages and benefits would remain the same until the Company and Union completed negotiations and agreed on all matters in a contract, even though negotiations extend beyond the time of year when wage increases are normally given.

However, as pointed out, this statement merely outlines the circumstances which would prevail and typifies a situation which routinely occurs during negotiations.

In *Gossen Co.*, 254 NLRB 339 (1981), the decision by Administrative Law Judge Norman Zankel affirmed by the Board states, in part, as follows:

> The General Counsel urges the references to delays in wage increases from part of the Employer's plan to blame the Union for the admitted suspension of the Employer's merit review and wage increase practices. I find no merit to this contention. Bancroft's notes reveal he said wage increases could be delayed. However, that reference is carefully tied to the results of negotiations. Properly viewed within the context of all the campaign literature to which the General Counsel makes no allusion, I cannot adopt his formulation. The Employer's campaign literature gives meaning to Bancroft's oral remarks at the meeting. For example, the Employer's June 11 letter to employees states, in salient part, "when a plant manager has decided that a wage increase is warranted but he is faced with having to negotiate it and the rest of the contract with a union, he often must *wait* and use the wage increases to help him reach the contract"; in a June 1 letter to all warehouse employees, the Employer stated that there were "delays in making wage increases due to long negotiations . . . ." at other Teamsters-represented plants of U.S. Gypsum; the Employer's June 1 letter to all production department employees contains a similar reference; and in the Employer's May 22 letter to all employees, after factually outlining apparently actual negotiating experiences at other U.S. Gypsum plants, Bancroft concludes stating "based on the past experience of U.S.G. people in general, I believe that voting for [the Union] could mean . . . costly wage delays might very well be experienced." In sum, I conclude the remarks concerning wage increases made at March and June meetings, intertwined with negotiations, are merely a legitimate prediction of possible consequences of unionization. I reject the argument that these remarks, in the total circumstances herein, are thinly veiled with threats or the "fist in the velvet glove" contemplated by *N.L.R.B.* v. *Exchange Parts Company*, 375 U.S. 405 (1964).

In the instant case, I conclude that the notice here in question—intertwined with the negotiation—is merely a legitimate prediction of possible consequences of unionization.[31]

[31] In *Craw & Son, supra*, the employees were not given their usual wage increase, and then were told that, if the employees designated the union as bargaining representative, the employer could "drag out" the negotiations for as many years as possible, and during such period their wages would be "frozen by law." In *General Motors Acceptance Corp., supra*, the employer *suspended* merit increases on the advent of the union, and informed employees that there would be no further merit increases until the matter of negotiations was settled. In *Liberty Telephone, supra*, the employer withheld the wage increase and then made statements that employees would not get their wage increase because of their union activity. In *JFB Mfg., supra*, there was a wage freeze notice "until union negotiations are settled." The factual circumstances in these cases are readily distinguishable. In the instant case employees were not denied any wage increases, but merely informed that the Company would have to

Continued

As aforestated, the Charging Party takes the position that the superintendents' speeches contained at least an implied threat to withhold the employees' fall wage increase, but, as indicated, the only possible rationale to support this position would be to consider that portion of the superintendents' speeches stating that the timing and amount of any wage increase would be subject to negotiations, together with the statement that it was possible negotiations could be long and drawn out. However, the latter statement must be considered in context. It is clear that this part of the speech discusses what might happen if the Union attempted to negotiate for more than the Company was able to pay, and it was in this context wherein the Company stated that negotiations could be long and drawn out. It has been well established that a prediction based on what position a union might take in negotiations does not constitute improper speech, but rather is protected and permissible free speech. In its total context, the statement here in question constitutes nothing more than remarks that wages could be delayed by negotiations.

The testimony given by James Powell on his alleged conversation with Foreman Rutledge, and the testimony given by Doanld Ennis as to remarks attributed to Foreman Barnes, must be deemed, at least essentially, as an accurate statement of Board law under the particular circumstances here.

Objection 13 is overruled.

Objection 14 states:

> On August 26–28, antiunion employes distributed a handbill suggesting that the Company would close if the Union won the election as the Company has closed a Canadian facility because of labor trouble.

It is clear from this record that certain antiunion employees distributed a document or leaflet during the week of the election which contained a reproduction of a newspaper article concerning labor troubles experienced by a Celanese plant in Canada.[32] However, there is no evidence that the Company was in any way responsible for this activity, and on absence of some evidence that the Company was responsible for or sponsored this document, the employees' distribution of this document, under all the extenuating circumstances here, cannot form, the basis for setting aside the election.[33]

Objection 15 states:

> On or about August 5, 1981, the Company sent a letter to employees falsely suggesting that, if the Union won, employees could not speak to management themselves without the Union. The Company posted the same message in the plant between August 13 and 17.

During the course of the organzing campaign, Dave Phillips, Fiber's superintendent of employee relations, and others distributed a number of memoranda to supervisors to assist them in responding to employees' question about the Union.

The language which the Union apparently contends is objectionable in the August 5 letter to employees from Plant Manager LeGrand and which reads as follows:

> The basic question you will soon decide is whether or not you and your family will be better off in the long run with the Union taking over the right to speak for you and your job, or whether you will be better off to keep your individual rights to speak for yourself. If the Union gets over half the votes cast in the election, they will speak for all eligible voters.[34]

On August 12, Dave Phillips distributed a memorandum to employees which stated, in pertinent part, as follows:

> It is only natural for someone to accept a union's promise of a greater voice through union representation without stopping to think how this could happen. In fact, quite the opposite is true. For example, now anyone who works for you has the right to come to you with a suggestion or problem. The person has a voice and is heard, although he or she may not always be pleased with the results. In a union plant, this same person would have to first convince the shop steward to take up his or her cause. Then the person would have to hope the shop steward understands the situation well enough to present it to you as convincingly as the person could have done directly.[35]

Attached to this August 12 memorandum from Phillips was a leaflet which the Company posted on its bulletin boards between August 13 and August 17 entitled "What If." The leaflet stated, in part:

> *First, in a unionized plant individuals cannot come directly to supervisors to solve the job related problems or to receive action on needed improvements.* Section 9(a) of the National Labor Relations Act prohibits a company from making any change requested by an individual employee if the change the employee seeks if inconsistent with any contract in existence and, in all cases, prohibits any change sought by an individual without first involving a union representative. Even more restrictive is Article XIV, Section 3 of the Teamsters constitution which prohibits members from dealing directly with management on any problem at any time.

On August 24 and 25, unit superintendents addressed the hourly employees, as detailed previously herein. In relationship to Objection 15, the basic speech by the superintendents stated as follows:

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bargain with the Union, and I do not believe that the employees could reasonably conclude that such a notice was intended to influence their organizational activities.

[32] See C.P. Exh. 22.

[33] To further show the full sequence of events, it is noted that the Union handbilled the entrance to the plant once a week and, from August 23 until the time of the election, the Union attempted to distribute literature on a daily basis. Again, it is obvious that both sides were exercising considerable campaign efforts coupled with numerous campaign statements, in their attempts to persuade employees.

[34] See C.P. Exh. 3.

[35] See C.P. Exh. 7.

> Three—By law, your shop steward, not you, would decide whether your problem or concern is important enough to take up you with your foreman or supervision for decision. The Teamster Constitution says you can't even personally present your problems to your supervisor.

Each superintendent then read a portion of article XIV, Section 3, of the Teamsters constitution, concerning a local union's authority to process grievances:

> Section 3. Every member, by virtue of his membership in the Local Union, authorizes his Local Union to act as his exclusive bargaining representative with full and exclusive power to execute agreements with his employer governing terms and conditions of employment and to act for him and have final authority in presenting, processing and adjusting any grievance, difficulty to dispute arising under any collective bargaining agreement or out of his employment with such employer in such manner as the Local Union or its officers deem to be in the best interests of the Local Union, all subject to Article XII and other applicable provisions of the International Constitution relating to such matters. The Local Union and its officers, business representatives and agents may decline to process any grievance, complaint, difficulty or dispute if in their reasonable judgment such grievance, complaint or dispute lacks merit.

Counsel for the Union points out in his argument that Section 9(a) of the Act expressly provides that "any individual employee . . . shall have the right at any time to present grievances to (his) employer and to have (his) grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective-bargaining contract or agreement then in effect: *Provided further*, that the bargainining representative has been given the opportunity to be present at such adjustment."

Counsel for the Union further argues that Section 9(a) is directly contrary to the Phillips memorandum, to the underscored portion of the notice posted on the bulletin board, and to the speeches given by the superintendents—that a union steward does not control an employee's right to take up a problem with his foreman or supervisor, and the Union need not be "involved" in every employee's direct contact with management—that the union need only have the opportunity to be present at the "adjustment" or final stage of the conversations. Moreover, argues the Union, the cited provisions of the Teamsters constitution do not restrict an employee's Section 9(a) rights— rather, the constitution reflects the Union's objections under Section 9 and the duty of fair representation.

In making my conclusions as to this objection, it is first noted that the law itself—Section 9(a) of the Act[36] was also posted on the bulletin board preceding the election, as was the company leaflet now in question. Here, unlike the cases where the Board has found a violation, the Company called attention to the employees' Section 9(a) rights by posting this provision of the Act on the bulletin board. Thus, the Company informed employees of Section 9(a)'s prohibition and also advised as to the Company's taking action on their grievance if it would be inconsistent with contract provisions or without involving a union representative.[37]

The Union also took exception to the Company's position and statements that the Teamsters constitution—article XIV, section 3—is even more prohibitive than Section 9(a) in that under this constitution provision a member is prohibited from dealing directly with management on any problem at any time. However, the Teamsters representative, Bill Grant, testified that management and that the constitution did not prohibit members from dealing directly with management and that the constitution was not inconsistent with Section 9(a). This testimony of Grant is, of course, merely a legal conclusion on his part, but it appears to me that a reasonable interpretation of this constitutional section in question tends to support the overall position of Respondent.[38]

In the final analysis, even if I accept the Union's argument that in the communications to employees the Company misstated the meaning of Section 9(a) of the Act and the meaning of the Union's constitution, and in speeches placed restrictions on the availability of management; this is still nothing more than misleading campaign statements which the Board has ruled no longer can form the basis for setting aside an election. *Midland National Life Insurance Co., supra.* Certainly, in consideration of the *totality* of the surrounding circumstances, and with the actual posting of the law itself, these incidents and sequence of events cannot be raised or elevated to the level of a threat in the loss of a benefit in reprisal for the selection of the Union, nor were they presented in a deceptive manner. This objection is overruled.

Objection 16 states:

> The charges filed in Case Nos. 11-CA-10044 through 10044-4 are incorporated by reference.

A review of the complaint in Case 11-CA-10044 reveals the following unfair labor practice allegations between the dates pertinent hereto:

> Interrogated its employees concerning their union activities and sentiments.
>
> Jim Allen—August 16, 1981
> Sterling McKee—August 2, 1981
>
> More strictly enforced work rules because its employees were engaging in Union activities.
>
> John Melchor—August 3, 1981

[36] Resp. Exh. 21.

[37] The cases on which the Union relies are factually distinguishable from the controlling circumstances herein.

[38] See *TRW-United Greenfield Division*, 245 NLRB 1135, 1142 (1979).

Created an impression among its employees that their Union activities were under surveillance by Respondent.

Jim Allen—August 16, 1981; August 18, 1981

Interfered with its employee rights by informing its employees that employees wearing Union insignia who visited other departments would be sent back to their own departments.

Sterling McKee—August 2, 1981
John Melchor—August 3, 1981

It appears that the allegations against John Melchor and Sterling McKee involve a single incident. Employee Jerry Reid, who worked in the staple processing area, testified that he had been taking his breaks in the warehouse area during early August and had been doing so for some time. He testified that, on August 3 his foreman, John Melchor, told him that he had been out of his area wearing Teamsters material and that the foreman from that area had stated that if he caught Reid again in this area he would run him out of there. Reid testified that Melchor also told him to stay in his area "until all of this was over with." Finally, he testified that Sterling McKee was the foreman of the warehouse unit and, therefore, he believed McKee was the foreman to whom Melchor had referred. Significantly, Reid admitted that he had talked to at least one employee, Eleanor Brown, in the warehouse area and had done so when Brown was working.[39]

Foreman John Melchor testified that he was approached by Foreman Sterling McKee was reported that Jerry Reid had been in the warehouse interfering with an employee who was working. Melchor testified that in response to this report he talked to Jerry Reid and told him that he was free to take his break in an area of his own choosing, but that he was not to go to the warehouse. He testified that he had told other employees the same thing. He denied making any reference in this conversation to the fact that Melchor wore union paraphernalia.

Reid testified that he had worn union paraphernalia for all three elections, that he frequently took his breaks in break areas outside the staple area, and that he did so freely and without any disciplinary action being taken against him.

Ron Sanford was employed in the warehouse. He testified that, on August 2, Foreman Sterling McKee asked him whether he thought employees would benefit from the Union, and that he answered yes, but McKee then replied that he did not think the Union would help because Fiber was doing the best it could and could not afford to match Allied Corporation's rates as they were making nylon. McKee then said, according to Sanford, that he did not mind his employees wearing union hats in his department, but, if anyone from another department came in wearing union material, he would send them out and call their foreman. McKee added that if Sanford, who was wearing the union material at the time, went into another department, he would expect the other foreman to do the same thing.

Testimony concerning Foreman Jim Allen came though employee Paul Shrewsbury. It appears that Shrewsbury was employed in spin draw, and testified that, on August 17 or 18, Foreman Jim Allen talked briefly with him, and, after reviewing his work record, Allen told Shrewsbury that he was a quality conscious worker, and testified that Allen then said that the Company did not need a union, and that the Company treated employees fairly. Allen further told Shrewsbury that his son-in-law worked on D crew and had little seniority and wondered how he could cope if the Union were certified, and also mentioned the strikes at Reynolds Aluminum, Republic Foil, and the Air Traffic Controllers, and also said that the Company might reconsider the possibility of offering a profit-sharing plant.

Employee Billy Haynes testified concerning a conversation he allegedly had with Supervisor Ernest Sloan which the Union contends constitutes a threat of plant closure. Haynes testified that in early August, while he and two other employees were discussing the closing of the Schlitz Brewery in Milwaukee, and in this connection employee Calvin Peeler said that Fiber would not close, but Supervisor Ernest Sloan then passed by and interjected, "they could if they got a Union in. If the Union ever had to go on strike, they could close it."[40]

Counsel for the Union points out that an employer violates Section 8(a)(1) of the Act by interrogating employees about their support for a union, by restricting employees to their work areas if they wear union insignia, by promising new benefits, and by threatening plant closure in the event of a strike, that the testimony of employees Shrewsbury, Sanford, and Haynes is uncontradicted and should be credited; and that John Melchor contradicted the testimony of Jerry Reid, but Sanford's testimony is consistent with Reid's and no evidence corroborates Melchor's testimony that Reid was interfering with another employee's work. Thus, Reid's testimony should also be credited.

Turning first to the incident involving Reid and Melchor. I find that Foreman Melchor credibly testified that he spoke to Reid on this one occasion because Reid was interfering with another employee while that employee was working and in violation of the Company's valid no-solicitation rule. Admittedly, at one time or another, Eleanor Brown had been on the job working when Reid went to the warehouse to see her.

As to the incident involving employee Ron Sanford and Foreman McKee, Sanford testified that McKee

[39] On or about August 1, 1981, the Union distributed caps, visors, and shirts to union supporters, and at this time Reid began wearing these items in the plant.

[40] The Company objected to this testimony on the ground that there was no allegation of plant closure in the objections. The Union argued that this was an allegation in Case 11-CA-10044 raised by Objection 16. A review of the complaint, however, reveals that there are no allegations against Ernest Sloan in the complaint. (See G.C. Exh. I(tt).) The Union further argues that the Regional Director's Report on Objections (Jt. Exh. 1) states that Case 11-CA-10044 involves a threat of plant closure, and it does so state. However, as pointed out, the complaint itself does not contain any allegation against Ernest Sloan and does not contain an allegation of a threat of plant closure. However, in the final analysis, this issue was fully litigated by all parties, and on the basis it is now before me for my finding.

asked him if he thought the Union would benefit employees and also made a statement about employees from other departments wearing union material in his department, as aforestated. Sanford testified that both before and after this conversation he wore union paraphernalia and otherwise openly supported the Union.

Even accepting here the fact that Foreman McKee interfered with Sanford's right to wear union insignia in other departments of the plant, a protected activity, nevertheless this isolated incident about 1 month before the election involving this single employee and a low-ranking member of the Company's supervisor hierarchy falls short of interfering with an election involving 2,000 voters. *Thermo King Corp., supra*, 247 NLRB at 305, fn. 22.[41]

As I have pointed out, the only testimony concerning Foreman Jim Allen came from employee Paul Shrewsbury, but there was no testimony from Shrewsbury, or from any other witness, that Allen interrogated employees or created in impression of surveillance as alleged, and certainly his single remark that the Company might reconsider the possibility of again offering a profit-sharing plan must be deemed a prediction of a possible future event, and cannot, under these particular circumstances, be deemed a promise of a benefit.

Turning now to the Billy Haynes and Ernest Sloan accident. Haynes testified that he and another employee were discussing closure of a Schlitz brewery in Milawaukee during a strike by the Teamsters, when another employee, Calvin Peele, stated, "they would'nt do that here," and to which Supervisor Sloan, who was walking by, replied that "if you got a Union in here and went on strike the same thing could happen here, they could close it down and shut they doors." I am in agreement that the statement attributed to Sloan by Haynes is nothing more than his prediction or opinion on what could happen if the Union were to strike the Company. Under the circumstances here, such a statement does not exceed the bounds of the Section 8(c) free speech proviso.

I also overrule Objection 16.

FINDINGS

For the reasons stated above, I find that the Union's objections to the August 1981 election do not raise any material or substantial issues affecting the results of the election.[42] Therefore, they are overruled in their entirety, and it is recommended that a certification of the results of the election in Case 11–RC–4714 be issued.

[41] In determining whether conduct is isolated and therefore did not interfere with an election, the Board considers such factors as the number of alleged violations, the severity of the alleged violations, the extent of the dissemination of the alleged violations, the size of the unit, the closeness of the election, and other relevant factors. *Super Thrift Markets*, 233 NLRB 409 (1977). Applying these factors to the situation in the present case, it becomes clear that the above incident is *de minimis*. See *Essex International*, 216 NLRB 831 (1975); *Swingline Co.*, 256 NLRB 704 (1981); *CBS Records Division*, 233 NLRB 709 (1976); *GTE Lenkurt*, 215 NLRB 321 (1974); and *Dyersburg Cotton Products*, 168 NLRB 1116 (1968).

[42] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.